



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

09/869,923

10/15/2001

William Suttle Peters

033376-001

2930

34313

7590

12/05/2003

ORRICK, HERRINGTON & SUTCLIFFE, LLP
4 PARK PLAZA
SUITE 1600
IRVINE, CA 92614-2558

EXAMINER

GETZOW, SCOTT M

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 12/05/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/869,923

Applicant(s)

PETERS ET AL.

Examiner

Scott M. Getzow

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 60-118 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 77-80, 83, 89-106, 115, 116 and 118 is/are allowed.
- 6) ☒ Claim(s) 1, 60, 61, 63, 64, 67, 81, 84, 107-110, 113, 114 and 117 is/are rejected.
- 7) ☒ Claim(s) 62, 65, 66, 68-76, 82, 85-88, 111 and 112 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5, 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3762

It should be noted that the examiner has renumbered claims 62-120 as claims 60-118.

The original application claims ended with claim 59, not claim 61.

Specification

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,60,61,63,64,67,81,107,108,109,110,113,114,117 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson et al '936.

Stephenson is considered to render obvious all of the subject matter of the above claims. Specifically, Stephenson shows an aortic compression means 14, a fluid reservoir 20 and a pump 24 that is stimulated electrically to contract to squeeze reservoir 20. It is considered to be obvious to shape and interconnect the devices as necessary to place them inside the patient in the most desirable

Art Unit: 3762

location. Further, regarding claim 81, the pressure port 40 is considered to be the means to sense pressure.

4. Claim 84 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephenson '936 as applied to claim 81 above, and further in view of Gruss et al (WO 99/04833).

Stephenson teaches all of the subject matter of the above claim except a compliance chamber. The application of Gruss et al shows such a chamber 3. It would have been obvious to use such with the invention of Stephenson since such provides for the efficient regulation of pressure in the system, and thus prevents possible malfunctioning.

Allowable Subject Matter

5. Claims 77,78,79,80,83,89-106,115,116,118 are allowed.

6. Claims 62,65,66,68-76,82,85-88,111,112 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (703) 308-2997. The examiner can normally be reached on M-F, 9-5.

Art Unit: 3762

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Scott M. Getzow
Primary Examiner
Art Unit 3762

smg